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No. 83-980

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES REDDING, et al.,

Petitioners,

v.

JAMES FAIRMAN, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

NEIL F. HARTIGAN
Attorney General, State of Illinois
160 North LaSalle Street, Suite 900
Chicago, Illinois 60601
(312) 793-3500
Counsel for Respondents

THOMAS A. IOPPOLO *
Assistant Attorney General
160 North LaSalle Street, Suite 825
Chicago, Illinois 60601
(312) 793-7652
Of Counsel

* Attorney of Record

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ARGUMENT

I.

THE COURT OF APPEALS CORRECTLY DECIDED THAT INMATES SEEKING MONEY DAMAGES FOR DUE PROCESS VIOLATIONS AT PRISON DISCIPLINARY HEARINGS HAD TO PROVE ACTUAL INJURY RESULTING FROM THE ALLEGED VIOLATIONS, AND THAT EVIDENCE TENDING TO SHOW THEIR GUILT FOR THE RULE INFRACTION SHOULD HAVE BEEN ADMITTED.

Seven inmates at the Pontiac Correctional Center, a maximum-security prison operated by the Illinois Department of Corrections, filed separate actions under 42

U.S.C. 1983. Their cases were consolidated by the district court for trial. All the cases alleged that the Adjustment Committee hearings at which they were found guilty of violating institutional rules were defective under *Wolff v. McDonnell*, 418 U.S. 539 (1974), and the Seventh Circuit decisions of *Hayes v. Walker*, 555 F.2d 625, cert. den. 434 U.S. 959 (1977), *Hayes v. Thompson*, 637 F.2d 483 (1980), and *Chavis v. Rowe*, 643 F.2d 1281, cert. den. 454 U.S. 907 (1981).

On a motion for summary judgment, the district court decided that each of the eighteen separate hearings at issue was constitutionally inadequate. The Court of Appeals affirmed this decision with respect to sixteen of the eighteen hearings. *Redding v. Fairman*, 717 F.2d at 1114-16. The Court of Appeals held that the written Adjustment Committee summaries failed to state adequately the evidence relied on and the reasons for the disciplinary action, requirements mandated by *Wolff v. McDonnell*. The Court of Appeals also ruled that in two of the hearings the record did not adequately document why the inmates were denied witnesses.

After the district court's ruling on the motion for summary judgment, the case proceeded to a jury trial on the question of damages. Each inmate testified that because of the Adjustment Committee's guilty finding, he suffered damages by being placed in the segregation unit and losing good time credits. The defendants sought to defend the damage claims by introducing evidence that, even if the hearings were procedurally defective, the inmates were nevertheless guilty of the rule violations, and that under *Carey v. Piphus*, 435 U.S. 247 (1978), only nominal damages should be awarded.

The issue which the petitioners seek to have reviewed here arose in the context of two inmates' hearings. In

the first, Inmate Melvin Nalls had received one year in segregation status and lost one year of good time credits for stabbing another inmate. At trial, the defendants attempted to introduce the testimony of a prison employee, Joseph Dillman, who observed Nalls and the victim in the shower area of the prison gymnasium where the stabbing occurred. Dillman observed the victim with blood on his pants and heard him say to Nalls, "I won't forget this."

In the other case, Inmate Jamal Ali Akbar had been found guilty of possessing contraband documents. While performing duties as a prison law clerk, Akbar had been subjected to a routine search by Officer M. L. Dunning. Dunning found among Akbar's legal papers a note or "kite" from one inmate to another inmate which Akbar was not authorized to have.

The district court would not permit Dillman or Dunning to testify before the jury, and would not admit the "kite" into evidence. The district court based its ruling on its interpretation of *Hayes v. Thompson*, 637 F.2d 483 (7th Cir. 1980), which held that the sufficiency of Adjustment Committee hearings must be judged solely within the confines of the administrative record. That is, when judging whether or not the requirements of *Wolff* have been met, *Hayes v. Thompson* holds that subsequent trial testimony cannot supplement what the Committee should properly have recorded originally.

The defendants contended at trial—and the Court of Appeals subsequently agreed—that the district court was misapplying *Hayes v. Thompson* in a way which put it in conflict with *Carey v. Piphus*.

In *Carey*, the plaintiffs were public school students who had been suspended for violating school rules. As in the present case, the district court ruled that the students

had been suspended without procedural due process. This Court held that if the students had been properly suspended (that is, if they were guilty of committing the rule violations), then they should not be compensated for damages resulting from the suspensions:

> "In this case, the Court of Appeals held that if [the school officials] can prove on remand that '[the students] would have been suspended even if a proper hearing had been held' (citation omitted), then respondents will not be entitled to recover damages to compensate them for injuries caused by the suspensions. The court thought that in such a case, the failure to accord procedural due process could not properly be viewed as a cause of the suspensions. (Citations omitted). The court suggested that in such circumstances, an award of damages for injuries caused by the suspensions would constitute a windfall, rather than compensation, to respondents. (Citations omitted). We do not understand the parties to disagree with this conclusion. Nor do we." *Carey v. Piphus* at 260.

It was this language which the defendants relied on in offering the testimony of Dillman and Dunning. The district court disagreed, and ruled that because these witnesses did not personally testify before the Adjustment Committee, they could not testify in court. The district court read *Hayes v. Thompson* as limiting all evidence at trial to the "administrative record." The jury ultimately awarded Nalls $1,000 and Akbar $3,700 in damages.

The decision of the Seventh Circuit reversing these awards was clearly correct and consistent with *Carey v. Piphus*. Beyond question, it would be a windfall for prison inmates to be rewarded for possession of contraband or assaultive behavior. Reliance on *Hayes v. Thompson* was misplaced because that case dealt with the question of

liability, while *Carey v. Piphus* deals with damages. Inmates cannot expect to seek substantial money damages in a lawsuit and then exclude relevant, competent evidence tending to show that they deserved punishment, and would have received the same punishment, even if a procedurally correct hearing had been held.

II.

THE COURT OF APPEALS CORRECTLY DECIDED THAT DUE PROCESS DOES NOT AUTOMATICALLY REQUIRE ADJUSTMENT COMMITTEE MEMBERS SUED FOR DAMAGES BY AN INMATE TO DISQUALIFY THEMSELVES WHEN THAT INMATE APPEARS BEFORE THE ADJUSTMENT COMMITTEE.

The decisions of this Court clearly establish that due process embodies the notion that decision-makers should be impartial. *Tumey v. Ohio*, 273 U.S. 510 (1927); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972). The decision-maker being questioned is presumed to be unbiased, and the burden of establishing a disqualifying interest rests on the party alleging bias. *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). In the present case, the district court announced a *per se* rule of disqualification for prison disciplinary hearings. The district court ruled that an Adjustment Committee member previously sued for money damages by a prisoner must disqualify himself when that prisoner appears before the Adjustment Committee; in effect, the district court created an irrebuttable presumption of bias.

The Court of Appeals rejected this *per se* approach for a number of valid reasons. The large number of inmate lawsuits pending at any given time would impose significant administrative burdens on the staff assignment process, and the three staff members assigned to Adjust-

ment Committee duties could be hampered by constantly having to disqualify themselves. This could be a particular problem for the Adjustment Committee chairman, who is typically a senior correctional officer. The chairman may hold that position for a several month period, and he could be almost entirely disabled from carrying out his duties if he had to work under a *per se* rule of disqualification.

Additionally, a *per se* rule would give inmates too much leverage over the disciplinary process. A prisoner could disqualify everyone in the institution from participating on the Adjustment Committee simply by suing them. There were eighteen defendants originally named in this case, and sixteen were involved with the numerous disciplinary hearings of just one inmate, Paul Tedder. All sixteen of those defendants would have been disqualified under a *per se* rule from participating on the Adjustment Committee.

The Seventh Circuit quite properly recognized the problems associated with this rigid procedure and instead opted for a case-by-case determination when questions of bias are raised because of pending lawsuits. The Court of Appeals ordered the district court on remand to consider, among other factors, the extent of the defendants' "personal involvement" in the pending lawsuits to determine whether due process requires disqualification. Any uncertainties inherent in this disposition can be resolved on remand.

CONCLUSION

For the foregoing reasons, the respondents pray that the petition for a writ of certiorari be denied.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General, State of Illinois
160 North LaSalle Street, Suite 900
Chicago, Illinois 60601
(312) 793-3500
Counsel for Respondents

THOMAS A. IOPPOLO*
Assistant Attorney General
160 North LaSalle Street, Suite 825
Chicago, Illinois 60601
(312) 793-7652
Of Counsel

*Attorney of Record